**IN THE HIGH COURT OF KERALA AT ERNAKULAM**

**PRESENT :**

**THE HONOURABLE MR. JUSTICE M.N.KRISHNAN**

**FRIDAY, THE 5TH OCTOBER 2007 / 13TH ASWINA 1929**

**WP(C).No. 27610 of 2007(J)**

**PETITIONER:**

**AYSHA ABOOBACKER, W/O ABOOBACKER,**
**KOYAMPATTA PEEDIKAYIL HOUSE,**
**PADINJATTUMURI DESOM, KADANGODU VILLAGE,**
**TALAPPILLY TALUK.**

**BY ADV. SRI.K.RAMAKUMAR**

**RESPONDENTS:**

**1. RAMLA SULAIMAN, W/O SULAIMAN,**
**KALLUNGAL HOUSE, PADINJATTUMURI DESOM,**
**KADANGODU VILLAGE, TALAPPILLY TALUK.**

**2. THE PRESIDENT,**
**KADANGODU GRAMA PANCHAYAT,**
**KADANGODU, THRISSUR DISTRICT.**

**BY ADV. SRI.P.C.SASIDHARAN - R1 AND R2**

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 05/10/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

**WP(C) NO: 27610/2007 J**

**APPENDIX**

**PETITIONER'S EXHIBITS**

**EXT.P1. COPY OF THE ORDER DT. 23/08/2007 ON THE FILE OF THE MUNSIFF'S COURT, WADAKKANCHERRY IN ELECTION OP NO. 21/05.**

**EXT.P2. COPY OF THE APPEAL DT. 25/08/2007 FILED BY THE RESPONDENT AS A.S NO. 312/07.**

**EXT.P3. COPY OF THE PETITION IN IA NO. 2754/07 IN A.S NO. 312/07 FILED BY THE RESPONDENT.**

**EXT.P4. COPY OF THE OBJECTION FILED BY THE PETITIONER IN -DO-**

**EXT.P5. COPY OF THE ORDER DT. 13/09/07 IN IA NO. 2754/07 IN AS NO. 312/07 ON THE FILE OF THE DIST. COURT, THRISSUR.**

**RESPONDENT'S EXHIBITS** **NIL.**

*True copy*

*tga*

**M.N. KRISHNAN, J.**

**= = = = = = = = = = = = = = =**

**W.P.C. NO. 27610 OF 2007**

**= = = = = = = = = = = = = = =**

**Dated this the 5th day of October, 2007.**

**J U D G M E N T**

This writ petition is preferred to set aside Ext.P5 order passed by the District Judge, Thrissur in I.A.2754/07 in A.S.312/07. The said appeal is preferred against the judgment of the Munsiff, Wadakanchery in Election O.P.21/05. The present writ petitioner filed the said application for setting aside the election and also with a prayer to declare her as the duly elected member from Ward No.2 of the Kadangode Grama Panchayat by a margin of seven votes. Challenging the same the first respondent preferred the appeal before the District Court as A.S.312/07 and it is in that application the learned District Judge passed an order whereby the appellant, i.e., the first respondent in the Election O.P. is permitted to participate in the meetings and proceedings of the Panchayat without any voting right in such meetings and the respondent herein is restrained from

making and subscribing oath or confirmation as a member of the Panchayat till the disposal of the appeal.

2. In the decision reported in ***Padmakumar v. Unnikrishnan (2004 (1) KLT 109)***, this Court held that by virtue of a decision rendered the operation comes into effect from that moment itself and therefore held that in such circumstances that further stay of operation of the order can be passed only before it comes into operation and not otherwise. Then, considering the impact that may have to be considered the Court directed that the defeated person in the Election petition can participate in the meetings and proceedings of the Panchayat but he cannot exercise any voting right in such meetings. The Court also held that the Election Commission shall not proceed to issue any fresh notification pursuant to the judgment of the Munsiff's Court until the disposal of the appeal by the appellate court.

3. The learned counsel for the writ petitioners submits before me that there is change of circumstances in the present case for the reason that the Court has declared

the second person as the winner. In order to declare the second person as the winner the first respondent's election has to be set aside. When it has been set aside by one Court and the matter is taken before appellate court in appeal and when an order is passed by the appellate court permitting him to participate and attend the meetings etc. One cannot permit the second portion of the order to become operative because it will be totally creating confusion. Or in other words, the second declaration given by the Court depends upon the finality of the decision on the first point. Since the first point is still under consideration by the appellate court, I find that the District Court has not committed any error in restraining the present writ petitioner from taking oath. But, at the same time I find that there is an omission done by the Court below because in case the appeal is dismissed and the order becomes operative there may not be any vacancy for the reason that the present writ petitioner is declared to be the winner by a margin of seven votes. Therefore, I modify the order to the limited extend by adding that Election

Commission shall not proceed to issue any fresh notification pursuant to the judgment of the Munsiff's Court until the disposal of the appeal by the appellate Court. I direct the learned District Judge to bestow his best attention to dispose of the matter as expeditiously as possible within a time frame of two months from today.

The writ petition is disposed of accordingly.

**M.N. KRISHNAN, JUDGE.**

ul/-